SENATE HEALTH, HUMAN SERVICES AND SENIOR CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 1072

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2019

The Senate Health, Human Services and Senior Citizens Committee reports favorably and with committee amendments Senate Bill No. 1072.

As amended by the committee, this bill establishes the "Medical Aid in Dying for the Terminally Ill Act," which will allow an adult New Jersey resident, who has the capacity to make health care decisions and who has been determined by that individual's attending and consulting physicians to be terminally ill, to obtain medication that the patient may self-administer to terminate the patient's life. Under the bill, "terminally ill" is defined to mean the patient is in the terminal stage of an irreversibly fatal illness, disease, or condition with a prognosis, based upon reasonable medical certainty, of a life expectancy of six months or less.

In order for a terminally ill patient to receive a prescription for medication under the bill, the patient is required to make two oral requests and one written request to the patient's attending physician for the medication. The bill requires at least 15 days to elapse between the initial oral request and the second oral request, and between the patient's initial oral request and the writing of a prescription for the medication. The patient may submit the written request for medication either when the patient makes the initial oral request, or at any time thereafter, but a minimum of 48 hours are to elapse between the attending physician's receipt of the written request and the writing of a prescription for medication.

When a patient makes an initial oral request for medication under the bill's provisions, the attending physician is required to provide the patient with information about the risks, probable results, and alternatives to taking the medication; recommend that the patient participate in a consultation concerning concurrent or additional treatment opportunities, palliative care, comfort care, hospice care, and pain control options; and refer the patient to a health care professional who is qualified to discuss those alternative care and treatment options. The patient may choose, but is not required, to participate in such consultation. The attending physician is also required to

recommend that the patient notify the patient's next of kin of the request, but medication may not be denied if a patient declines, or is unable to, provide this notification.

The attending physician is required to refer the patient to a consulting physician for the purpose of obtaining confirmation of the attending physician's diagnosis. Both the attending physician and the consulting physician are required to verify that the patient has made an informed decision when requesting medication under the bill. When the patient makes the second oral request, the attending physician is to offer the patient an opportunity to rescind the request. In addition, the attending physician is required to notify the patient that a request may be rescinded at any time and in any manner, regardless of the patient's mental state.

A patient may make a written request for medication, in accordance with the bill's provisions, so long as the patient: is an adult resident of New Jersey, as demonstrated through documentation submitted to the attending physician; is capable; is terminally ill, as determined by the attending physician and confirmed by the consulting physician; and has voluntarily expressed a wish to receive a prescription for the medication.

The bill requires a valid written request for medication to be in a form that is substantially similar to the form set forth in the bill. The bill requires the written request to be signed and dated by the patient and witnessed by at least two individuals who attest, in the patient's presence, that, to the best of their knowledge and belief, the patient is capable and is acting voluntarily.

The bill requires at least one of the witnesses to be a person who is not:

(1) a relative of the qualified patient by blood, marriage, or adoption;

(2) at the time the request is signed, entitled to any portion of the patient's estate upon the patient's death; or

(3) an owner, operator, or employee of a health care facility, other than a long term care facility, where the patient is receiving medical treatment or is a resident.

The patient's attending physician may not serve as a witness.

A written request form will be required to include an indication as to whether the patient has informed the patient's next-of-kin about the request for medication and an indication as to whether concurrent or additional treatment consultations have been recommended by the attending physician or undertaken by the patient.

If the patient complies with the bill's oral and written request requirements, establishes State residency, and is found by both the attending physician and a consulting physician to be capable, to have a terminal illness, and to be acting voluntarily, the patient will be considered to be a "qualified terminally ill patient" who is eligible to receive a prescription for medication. The bill expressly provides that

a person is not be considered to be a “qualified terminally ill patient” solely on the basis of the person’s age or disability or the diagnosis of a specific illness, disease, or condition.

If either the attending physician or the consulting physician believes that the patient may lack capacity to make health care decisions, the physician will be required to refer the patient to a mental health care professional, which is defined in the amended bill to mean a licensed psychiatrist, psychologist, or clinical social worker, for a consultation to determine whether the patient is capable. If such a referral is made, the attending physician is prohibited from issuing a prescription to the patient for medication under the bill unless the attending physician has received written notice, from the mental health care professional, affirming that the patient is capable.

Prior to issuing a prescription for requested medication, the attending physician is required to ensure that all appropriate steps have been carried out, and requisite documentation submitted, in accordance with the bill’s provisions. The patient's medical record is to include documentation of: the patient’s oral and written requests and the attending physician’s offer to rescind the request; the attending physician’s recommendation for concurrent or alternative care and treatment consultations, and whether the patient participated in a consultation; the medical diagnosis and prognosis of both the attending physician and the consulting physician, and their determinations that the patient is terminally ill, is capable of making the request, is acting voluntarily, and is making an informed decision; the results of any counseling sessions with a mental health care professional ordered for the patient; and a statement that all the requirements under the bill have been satisfied.

A patient's request for, or the provision of, medication in compliance with the bill will not constitute abuse or neglect of an elderly person, and may not be used as the sole basis for the appointment of a guardian or conservator. The bill specifies that a patient’s guardian, conservator, or representative is not authorized to take any action on behalf of the patient in association with the making or rescinding of requests for medication under the bill’s provisions, except to communicate the patient’s own health care decisions to a health care provider upon the patient’s request. The bill prohibits any contract, will, insurance policy, annuity, or other agreement from including a provision that conditions or restricts a person’s ability to make or rescind a request for medication pursuant to the bill, and further specifies that the procurement or issuance of, or premiums or rates charged for, life, health, or accident insurance policies or annuities may not be conditioned upon the making or rescinding of a request for medication under the bill’s provisions. An obligation owing under a contract, will, insurance policy, annuity, or other agreement executed before the bill’s effective date will not be affected

by a patient's request, or rescission of a request, for medication under the bill.

Any person who, without the patient's authorization, willfully alters or forges a request for medication pursuant to the bill, or conceals or destroys a rescission of that request, with the intent or effect of causing the patient's death, will be guilty of a crime of the second degree, which is punishable by imprisonment for a term of five to 10 years, a fine of up to $150,000, or both. A person who coerces or exerts undue influence on a patient to request medication under the bill, or to destroy a rescission of a request, will be guilty of a crime of the third degree, which is punishable by imprisonment for a term of three to five years, a fine of up to $15,000, or both. The bill does not impose any limit on liability for civil damages in association with the negligence or intentional misconduct of any person.

The amended bill provides immunity from civil and criminal liability, from professional disciplinary action, and from censure, discipline, suspension, or loss of any licensure, certification, privileges, or membership for any action that is undertaken in compliance with the bill, including the act of being present when a qualified terminally ill patient takes the medication prescribed to the patient under the bill's provisions. As amended, the bill provides that this immunity also applies to any refusal to take actions in furtherance of, or to otherwise participate in, a request for medication made under the bill. Any action undertaken in accordance with the bill will not be deemed to constitute patient abuse or neglect, suicide, assisted suicide, mercy killing, euthanasia, or homicide under any State law, and the bill expressly exempts actions taken pursuant to the bill from the provisions of N.J.S.2C:11-6, which makes it a crime to purposely aid a person in committing suicide. These immunities will not apply to acts or omissions constituting gross negligence, recklessness, or willful misconduct. Nothing in the bill is to be construed to authorize a physician or other person to end a patient's life by lethal injection, active euthanasia, or mercy killing.

The bill amends section 1 of P.L.1991, c.270 (C.2A:62A-16), which establishes a "duty to warn" when a health care professional believes that a patient intends to carry out physical violence against the patient's own self or against another person, in order to specify that that "duty to warn" provisions are not applicable when a qualified terminally ill patient requests medication under the bill.

The bill requires a patient's attending physician to notify the patient of the importance of taking the prescribed medication in the presence of another person and in a non-public place. The bill specifies that, if any governmental entity incurs costs as a result of a patient's self-administration of medication in a public place, the governmental entity will have a claim against the patient's estate to recover those costs, along with reasonable attorney fees.

The bill authorizes attending physicians, if registered with the federal Drug Enforcement Administration, to dispense requested medication, including ancillary medication designed to minimize discomfort, directly to the patient. Otherwise, the attending physician may transmit the prescription to a pharmacist, who will dispense the medication directly to the patient, to the attending physician, or to an expressly identified agent of the patient. Medication prescribed under the bill may not be dispensed by mail or other form of courier. Not later than 30 days after the dispensation of medication under the bill, the physician or pharmacist who dispensed the medication will be required to file a copy of the dispensing record with the Department of Health.

Any medication prescribed under the bill, which the patient chooses not to self-administer, is required to be disposed of by lawful means, and patients are to designate a person who will be responsible for the lawful disposal of the medication. Lawful means includes, but is not limited to, disposing of the medication consistent with State and federal guidelines concerning disposal of prescription medications or surrendering the medication to a prescription medication drop-off receptacle. No later than 30 days after the patient's death, the attending physician will be required to transmit documentation of the patient's death to the Department of Health. The department is required, to the extent practicable, to coordinate the reporting of dispensing records and records of patient death with the process used for the reporting of prescription monitoring information. The department will be required to annually prepare and make available on its Internet website a statistical report of information collected pursuant to the bill's provisions; information made available to the public will not include personal or identifying information.

A health care facility's existing policies and procedures will be required, to the maximum extent possible, to govern actions taken by health care providers pursuant to the bill. Any action taken by a health care professional or facility to carry out the provisions of the bill is to be voluntary. If a health care professional is unable or unwilling to participate in a request for medication under the bill, the professional will be required to refer the patient to another health care provider and provide the patient's medical records to that provider.

COMMITTEE AMENDMENTS:

The committee amendments revise the title of the bill to read the "Medical Aid in Dying for the Terminally Ill Act," and update the synopsis and language references throughout the bill to reflect this change.

The committee amendments clarify that patients are to be advised of both concurrent and additional treatment opportunities, as well as palliative care, comfort care, hospice care, and pain control, when making a request for aid in dying medication under the bill.

The committee amendments provide that licensed clinical social workers will be permitted to make a determination as to whether a patient has the capacity to make health care decisions; as introduced, the bill provided that only licensed psychiatrists and psychologists could make this determination. The committee amendments additionally add a new definition of "mental health care professional," which includes licensed psychiatrists, psychologists, and clinical social workers, and add a provision requiring the State Board of Social Work Examiners to adopt rules and regulations to implement the provisions of the bill. The committee amendments remove references concerning the referral of a patient to a mental health care professional if the attending or consulting physician thinks the patient may have a psychiatric or psychological disorder or depression that causes impaired judgment; as amended, the bill provides for such referrals when the attending or consulting physician thinks the patient may lack the capacity to make health care decisions. The bill removes a definition of "counseling," and various references to the term, that are obviated by these amendments.

The committee amendments revise the definition of "self-administer" to clarify that the term will not be limited to ingesting the aid in dying medication, but will instead apply to the physical administration of the medication to the patient's own self.

The committee amendments remove a provision that would have required that, if the patient is a resident in a long term care facility, a designated staff member of the facility is required to be one of the witnesses to the patient's written request. The committee amendments further provide an exception to the prohibition against an owner, operator, or employee of a health care facility from being a witness to the patient's written request, to provide that this prohibition will not apply when the patient is a resident of a long term care facility. The bill defines "long term care facility" to mean a licensed nursing home, assisted living residence, comprehensive personal care home, residential health care facility, or dementia care home.

The committee amendments remove certain language concerning when a patient has provided written consent for the patient's attending physician to contact a pharmacist regarding a prescription for aid in dying medication; the bill expressly provides elsewhere that the patient may provide such written consent when completing the written consent form, making the additional reference to the consent redundant.

The committee amendments clarify that the means of lawfully disposing of unused aid in dying medication may include disposal consistent with State and federal guidelines concerning the disposal of prescription medications or surrender to a prescription medication drop-off receptacle. Patients are to designate a person who will be responsible for lawfully disposing of the medication.

The committee amendments revise the requirement that the dispensing record for medical aid in dying medication be transmitted to the Division of Consumer Affairs in the Department of Law and Public Safety to: (1) require that the record instead be transmitted to the Department of Health, and (2) clarify that only physicians and pharmacists are authorized to dispense aid in dying medication under the bill.

The committee amendments provide that, in addition to immunity from civil and criminal liability and professional disciplinary action, a person may not be subject to censure, discipline, suspension, or loss of any licensure, certification, privileges, or membership for any action taken in compliance with the bill. The committee amendments further provide that these protections also apply to the refusal to take any action in furtherance of, or to otherwise participate in, a request for medication under the bill.

The committee amendments provide that the immunities and protections established under the bill do not apply to acts or omissions that constitute gross negligence, recklessness, or willful misconduct.

The committee amendments clarify that, in addition to not constituting patient abuse or neglect, suicide, assisted suicide, mercy killing, or homicide, actions taken in connection with a request for medication under the bill will not constitute euthanasia.

The committee amendments provide that, in addition to not providing the sole basis for the appointment of a guardian or conservator, a patient's request for, or the provision of, medication under the bill will not constitute abuse or neglect of an elderly person.

The committee amendments make a number of technical revisions to the bill, including updating punctuation and removing several redundant language provisions.